IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 134 of 2005 (M/B)

Khairati Lal s/o Shri Kota Singh
R/o Village- Shisona (Kota Farm)
Tehsil Sitarganj,
District Udham Singh Nagar …….. Petitioner

Versus

1. State of Uttaranchal through
   Chief Secretary, Uttaranchal Government, Dehradun
2. Superintending Engineer, Irrigation Department,
   Rudrapur, District Udham Singh Nagar.
3. Executive Engineer, Irrigation Department,
   Sitarganj, District Udham Singh Nagar.
4. The Collector,
   District Udham Singh Nagar ……. Respondents.

……..

Sri S.K. Mandal, Advocate for the petitioner.
Mr. J.P. Joshi, Addl. C.S.C. for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Sri Manoj Tiwari, Advocate for the petitioner.

Mr. J.P. Joshi, Addl. C.S.C. for the respondents.

They are heard.

2. Petitioner Khairati Lal has filed this writ petition for the following reliefs:

> "I) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to pay the compensation for Bhumidhari Land taking for making of River side (Tatbandh) of Baigul river bank, as per the current rate to the petitioner.
> II) Issue a writ, order or direction in the nature of mandamus, directing and commanding the respondents to give alternative land of same value and nature, to the petitioner.
> III) Issue a suitable writ order or direction in the nature which this Hon'ble Court may deem fit and proper in the circumstances of the case.
> IV) Award the cost of the petition."

3. In substance, the petitioner is seeking compensation for his land which is alleged to have been acquired/used by the respondents for the construction of embankment on the bank of river Baigul.

4. The respondents have filed their counter affidavit denying factual averments made by the petitioner in the writ petition. Para 7 of the counter affidavit reads as follows:

> "7. That the contents of para 6 of the writ petition are incorrect and misconceived, hence denied. As submitted above, no area of he land of the petitioner has been taken for making the embankment, which is manifestly evident from the report of the S.D.M. who visited the spot also in the presence of the petitioner."

5. The contents of para 7 of the counter affidavit further stands corroborated by Annexure CA-02, which is an order passed by Sub-Divisional Magistrate, Khatima while considering the representation of the petitioner in compliance of this Court order dated 18.02.2005.

6. On due consideration of the submissions of the learned counsel for the parties and the contents of Annexure CA-02, we find that the respondents are seriously disputing the fact that the petitioner's land is acquired/used for the construction of any embankment on the bank of river Baigul.

7. Thus, the petition involves serious disputed question of fact. In our opinion, appropriate remedy for the petitioner would be to approach the Civil Court as disputed question of fact which require leading of evidence by the parties in support of their claim cannot be resolved in a writ petition under Article 226 of the Constitution of India.

8. With the above observation, the writ petition stands disposed of.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**
20.06.2006 20.06.2006

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